UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 02-10940-RWZ

ESTATE OF JEAN C. PALANZI

v.

BELL ATLANTIC CORP. and AETNA U.S. HEALTHCARE, INC.

MEMORANDUM OF DECISION

March 24, 2003

ZOBEL, D.J.

Ms. Jean Palanzi, an employee at Bell Atlantic Corporation ("Bell"), was diagnosed with colon cancer in March 1999. On March 24, 1999, Ms. Palanzi took a medical leave and began to receive short-term disability benefits under Bell's plan. The Complaint alleges that during that time representatives of Bell and Aetna U.S. Healthcare, Inc. ("Aetna")[1] informed Ms. Palanzi that she was to receive 52 weeks of short-term disability at full pay with benefits.[2] On October 5, 1999, Ms. Palanzi's supervisor informed her that she was entitled to receive only 26 weeks of short-term disability, which had expired. Because she had not returned to work immediately, Bell terminated her without notice effective September 29, 1999. Ms. Palanzi attempted to return to work and after a delay, Bell rehired her on January 24, 2000, with workplace accommodations. Bell then threatened to withdraw the accommodations "over the

[1] Note that Aetna U.S. Healthcare contends that Aetna Life Insurance Company is the correct party.

[2] The Complaint does not specify whether Ms. Palanzi received this information before she went on medical leave or thereafter.

unrelated issue of whether Ms. Palanzi should pay to Bell Atlantic the net amount of a check Bell Atlantic had paid her in December. . . ." Thereafter, Bell removed the accommodations and Ms. Palanzi paid the disputed amount. Bell also initially did not allow Ms. Palanzi to carry over three weeks of vacation time from 1999, and inconsistently argued that Ms. Palanzi use that time for her chemotherapy sessions. Eventually, Bell allowed her to carry over her vacation time. Ms. Palanzi was subsequently hospitalized and Bell refused to allow her to use her vacation time and terminated her effective February 22, 2000. By notice dated April 5, 2000, Ms. Palanzi's long-term benefits were cancelled. On May 30, 2000, Ms. Palanzi died.

On March 22, 2002, the Estate of Ms. Palanzi filed suit against Bell and Aetna. Counts I and II allege handicap discrimination and retaliation against Bell in violation of state and federal law. The remaining counts allege: intentional or reckless infliction of emotional distress (Count III), negligent infliction of emotional distress (Count IV), deceit (Count V), negligent misrepresentation (Count VI), breach of fiduciary duty under the Employee Retirement Income Security Act of 1974 ("ERISA") (Count VII) and common law breach of fiduciary duty (Count VIII) against both defendants. Defendant Aetna has filed a Motion to Dismiss on three grounds: (1) plaintiff's claims are asserted against the wrong party, (2) all counts, except for Count VII for breach of fiduciary duty under ERISA, are preempted, and (3) plaintiff cannot bring an individual claim for breach of duty under ERISA. Defendant Bell also filed a Motion to Dismiss, contending that: (1) Counts III, IV, V, VI and VIII are preempted by ERISA, (2) Counts III and IV are barred by the Massachusetts Workers' Compensation Act, and (3) no common law breach of fiduciary duty claim (Count VIII) exists.

Aetna contends that ERISA preempts all counts except for Count VII. ERISA's preemption provision is broad: it "shall supersede any and all State laws insofar as they may now or hereafter relate to any" employee benefit plan. 29 U.S.C. §1144(a). In bringing claims against the administrator of an ERISA-regulated plan,[3] plaintiff's allegations necessarily "relate to" an employee benefit plan and are therefore preempted. See Industrial Technical Services v. Phoenix Home Life Mutual Insurance Co., 866 F. Supp. 48, 50 (D. Mass. 1994)("[S]tate laws that are not facially inconsistent, but which affect the interpretation and administration of benefits, may also be preempted."). Given its purpose of providing "the assurance of uniformity in the administration of benefits plans, in the provision of benefits and in reporting requirements[,]" preemption is proper. Id. See Hampers v. W.R. Grace & Co., Inc., 202 F.3d 44, 51 (1st Cir. 2000).

Furthermore, Aetna correctly points out that the plaintiff cannot sustain an individual claim for breach of fiduciary duty under ERISA. The only situations in which a plaintiff may bring a claim against a fiduciary are: (1) on behalf of the plan, Massachusetts Mutual Life Insurance Co. v. Russell, 473 U.S. 134, 105 S.Ct. 3085 (1985), or (2) when equitable relief is sought. Varity Corp. v. Howe, 516 U.S. 489, 116 S.Ct. 1065 (1996). In this case, the plaintiff is seeking individual damages. Thus, it cannot maintain its claim for breach of fiduciary duty under ERISA against either AETNA or Bell. Aetna's Motion to Dismiss is therefore allowed.

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[3] Aetna contends that Aetna Life Insurance Company provided certain administrative services for Bell's disability plans.

Similarly, claiming preemption by ERISA, Bell seeks to dismiss the following claims: intentional or reckless infliction of emotional distress, negligent infliction of emotional distress, deceit, negligent misrepresentation, and common law breach of fiduciary duty. Insofar as they do not implicate Ms. Palanzi's rights under Bell's plan, they are not preempted. For example, the claims concerning Ms. Palanzi's termination without notice, delay by Bell in allowing her to return to work, Bell's threats of and the actual withdrawal of her workplace accommodations, Bell's initial refusal to allow her to carry over her vacation time, and her second and final termination from Bell, do not "relate to" an ERISA-regulated plan and therefore are not preempted. However, Count VIII, which alleges that Bell breached its fiduciary duty in its capacity as plan administrator, does relate to the plan and is preempted.

Finally, Bell contends that plaintiff's claims for intentional or reckless and negligent infliction of emotional distress are barred by the Massachusetts Workers' Compensation Act. When an employee has not reserved her rights, the Massachusetts Workers' Compensation Act bars common law actions against an employer where: (1) the plaintiff is an employee, (2) where the plaintiff suffers injury, and (3) that injury arose "out of and in the course of employment." Hamilton v. Baystate Medical Education and Research Foundation, Inc., 866 F. Supp. 51 (D. Mass. 1994)(quoting Foley v. Polaroid Corp., 413 N.E.2d 711 (Mass. 1980)). Because Ms. Palanzi did not reserve her common law rights, the plaintiff's claims are dismissed for the period during which Ms. Palanzi was a Bell employee. However, the claims for emotional distress suffered by Ms. Palanzi during the time periods that she was not an employee remain. See Grant v. John Hancock Mutual Life Insurance Co., 183 F. Supp. 2d 344, 366 (D. Mass.

2002) (In general, termination of an employee also terminates employer's liability for injury under the Workers' Compensation Act.).

Accordingly, Aetna's Motion to Dismiss is ALLOWED. Bell's Motion to Dismiss Count VIII is ALLOWED. Bell's Motion to Dismiss Counts III, IV, V and VI is DENIED to the extent that they do not pertain to Ms. Palanzi's rights under the ERISA-regulated plan. Bell's Motion to Dismiss Counts III and IV is DENIED because Ms. Palanzi's claims are viable for the time that she was not a Bell employee.

_____ DATE

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RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE